

# CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Title 18. Public Revenues

Regulation 1205, *Fee Payer; Rebuttable Presumption*

Regulation 1212, *Liability for Fee*

Regulation 1271, *Records*

#### **A. Factual Basis**

Chapter 1.5 (commencing with section 1201) of division 2 of title 18 of the California Code of Regulations (chapter 1.5) contains regulations that implement, interpret, or make specific the provisions of the Underground Storage Tank Maintenance Fee Law (Law) (part 26 (commencing with section 50101) of division 2 of the Revenue and Taxation Code), pursuant to which the State Board of Equalization (BOE) administers the petroleum storage fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code.<sup>1</sup> The BOE hereby proposes to change the provisions of chapter 1.5 listed above under California Code of Regulations, title 1, section (Rule) 100 to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

The Law was enacted in 1989 (Sen. Bill No. 299 (Stats. 1989, ch. 1442)). Section 50107 of the Law defines the two-word term “fee payer” to mean “any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code” and the two word term “fee payer” was originally used throughout the Law and in chapter 1.5.

However, amendments made to the Law since 2000 have used the one-word term “feepayer,” rather than the two-word term “fee payer.” (See, e.g., Assem. Bill No. 2894 (Stats. 2000, ch. 923) [adding the one-word term “feepayer” to section 50112 and replacing the two-word term “fee payer” with the one-word term “feepayer” in section 50112.4, subd. (b)].) Furthermore, the BOE has stopped using the two-word term “fee payer” to refer to a person that is liable for the payment of a BOE-administered fee in its forms and publications, and the BOE has adopted a uniform policy requiring its staff to use the one-word term “feepayer” in place of the two-word term “fee payer.” (See the direction regarding the word “feepayer” in the BOE Style A-Z section of BOE Publication 384, “A Style Guide for BOE Forms and Publications” (May 2011), Introduction and page 3 from the BOE’s internal website, attached.)

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<sup>1</sup> The BOE jointly administers the fees imposed under Health and Safety Code sections 25299.41 and 25299.43 under the Law in accordance with section 50108 of the Law and Health and Safety Code section 25299.43, subdivision (g), respectively. Chapter 1.5 was adopted to implement, interpret, and make specific the fees imposed by both sections 25299.41 and 25299.43 and the term “fee payer,” as currently used in chapter 1.5, refers to a person that is liable for the payment of the fees imposed by both sections.

The BOE-adopted regulations listed above use the two-word term “fee payer.” Therefore, the BOE now proposes to change the regulations listed above, and described in detail below, to replace the two-word term “fee payer” with the one-word term “feepayer” under Rule 100, in order to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

## **B. Proposed Changes**

### **1. Rule 100 Change to Regulation 1205, *Fee Payer; Rebuttable Presumption***

A Rule 100 change is proposed to replace the two-word term “Fee Payer” with the one-word term “Feepayer” in the title of Regulation 1205.

### **2. Rule 100 Changes to Regulation 1212, *Liability for Fee***

A Rule 100 change is proposed to replace the two-word term “fee payer” with the one-word term “feepayer” in the second sentence of subdivision (d) of Regulation 1212.

### **3. Rule 100 Change to Regulation 1271, *Records***

A Rule 100 change is proposed to replace the two-word term “fee payer” with the one-word term “feepayer” in subdivision (a) of Regulation 1271.

The foregoing changes are appropriate for processing under Rule 100 because they are changes without regulatory effect and do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. Furthermore, these changes are necessary in order to update the manner in which the BOE refers to persons that are liable for payment of the fees imposed under sections 25299.41 and 25299.43 of the Health and Safety Code in the regulations.

## PROPOSED CHANGES

1. Change Regulation 1205 (Fee Payer; Rebuttable Presumption) to read as follows:

### **Regulation 1205. Feepayer~~Fee Payer~~; Rebuttable Presumption.**

The fee is due from the owner of an underground storage tank for which a permit is required pursuant to Section 25284 of the Health and Safety Code. There is a rebuttable presumption that the owner of the real property is the owner of the underground storage tank located on the property, even if the property is leased to another person. This presumption may be overcome by showing that ownership of the tank rests with someone other than the real property owner. Evidence to rebut the presumption may include, but is not limited to, the following:

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) . . . (unchanged).

(d) . . . (unchanged).

(e) . . . (unchanged).

Note: Authority cited: Section 50152, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code. Reference: Section 50107, Revenue and Taxation Code; and Sections 25299.21, 25299.41 and 25299.43, Health and Safety Code.

2. Change Regulation 1212 (Liability for Fee) to read as follows:

### **Regulation 1212. Liability for Fee.**

(a) . . . (unchanged).

(b) . . . (unchanged).

(c) . . . (unchanged).

(d) An owner is liable for the fee even though the owner claims he or she did not know the fee was due or was unable to obtain information from an operator as to the gallons placed into the underground storage tank(s). As provided by subdivision (c) of Section 50159 of the Revenue and Taxation Code, the board may provide to the feepayer~~fee payer~~ otherwise confidential information obtained from the operator of an underground storage tank to the extent that this information is necessary for assessment, administration, and verification of the fee.

Note: Authority cited: Section 50142, Revenue and Taxation Code; and Section 25299.42, Health and Safety Code. Reference: Sections 50107, 50109 and 50159, Revenue and Taxation Code; and Sections 25299.41 and 25299.43, Health and Safety Code.

3. Change Regulation 1271 (Records) to read as follows:

**Regulation 1271. Records.**

(a) General. A ~~feepayer~~~~fee payer~~ shall maintain and make available for examination on request by the board or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

(b) . . . (unchanged):

(1) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

Note: Authority cited: Section 50152, Revenue and Taxation Code. Reference: Sections 50109 and 50153, Revenue and Taxation Code.